

No. 5:09-CV-00411-BR

Defendant.

ORDER

Plaintiff seeks reconsideration of a portion of the Court's December 22, 2011 Order [DE-65], specifically the denial of Plaintiff's motion to compel with respect to Document Request nos. 1 and 8. With respect to Document Request No. 1, Plaintiff contends that the Court failed to consider that Defendant did not produce "electronic timecards." As the Court stated in its prior order, Defendant has provided Plaintiff with his payroll records as they are maintained in the ordinary course of business, which is all that Defendant is required to do under Rule 34(2)(E). Defendant need not create documents that do not already exist. With respect to Document Request No. 8, Plaintiff contends that his request for other employees' wage history is relevant to his overtime wage claim. As the Court stated in its prior order, the wage history of other employees is not relevant to Plaintiff's overtime claim. Plaintiff's only remaining claim is his overtime claim under the FLSA, 29 U.S.C. § 207. [DE-28 & 36.] All other claims, including a claim under section 301 of the LMRA, 29 U.S.C. § 185, related to the rate of pay Plaintiff claims he was entitled to receive under the CBA have been dismissed. *Id.*

The Court fully considered the requests at issue in ruling on Plaintiff's motion to compel and finds no reason to reverse its December 22, 2011 Order. Accordingly, Plaintiff's motion to reconsider is **DENIED**.

This the 23rd day of February, 2012.



DAVID W. DANIEL
United States Magistrate Judge